



BEST FOR ALL

We will set all students on a path to success.

Section 504: From Referral to Eligibility

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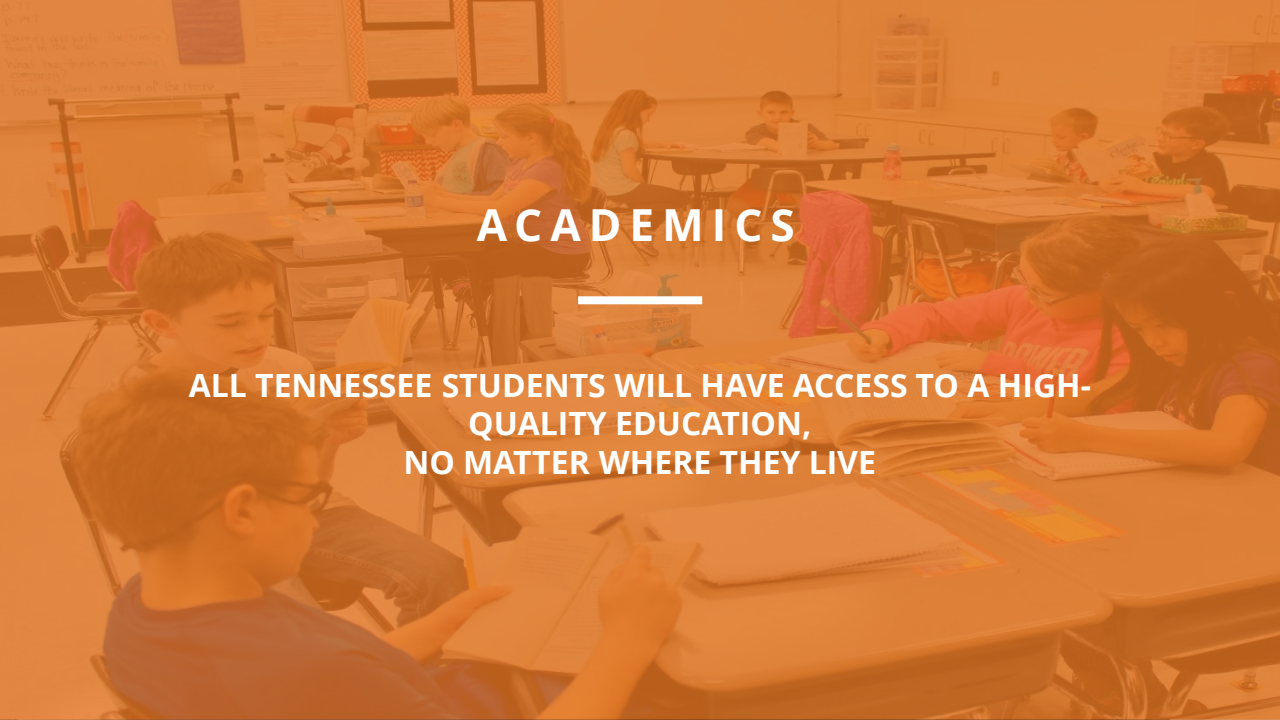
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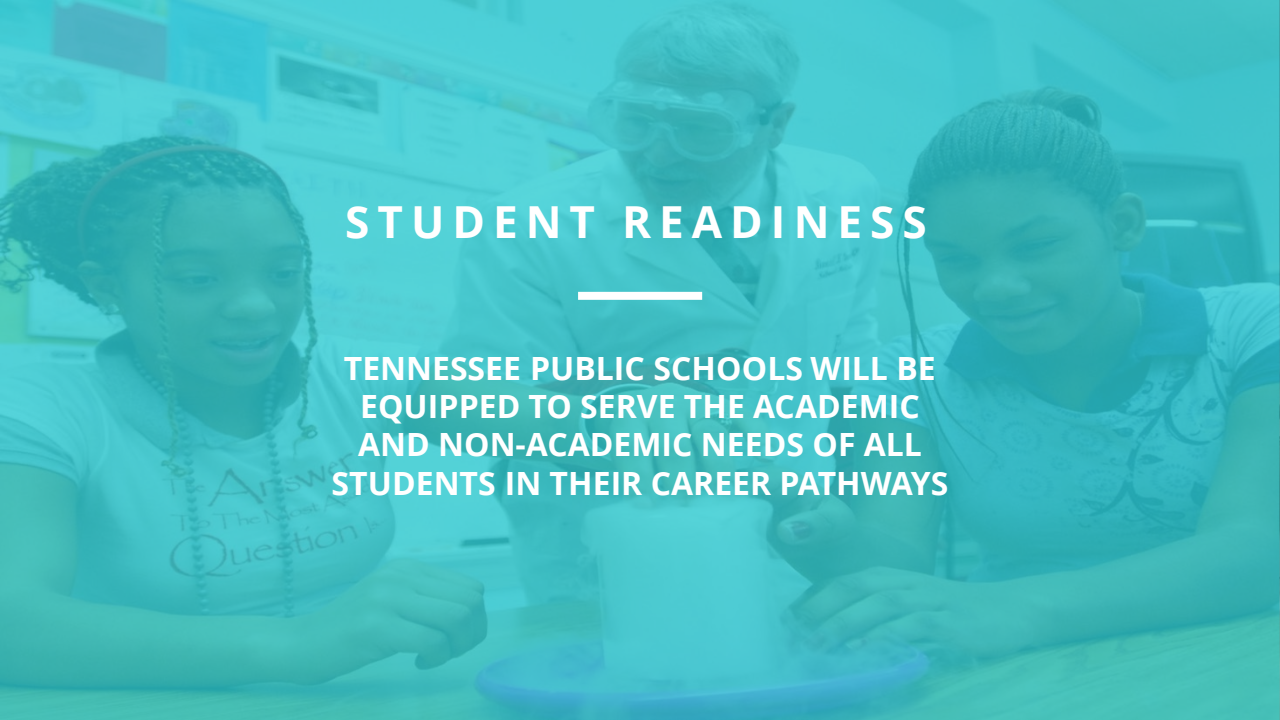
ACADEMICS

ALL TENNESSEE STUDENTS WILL HAVE ACCESS TO A HIGH-QUALITY EDUCATION, NO MATTER WHERE THEY LIVE



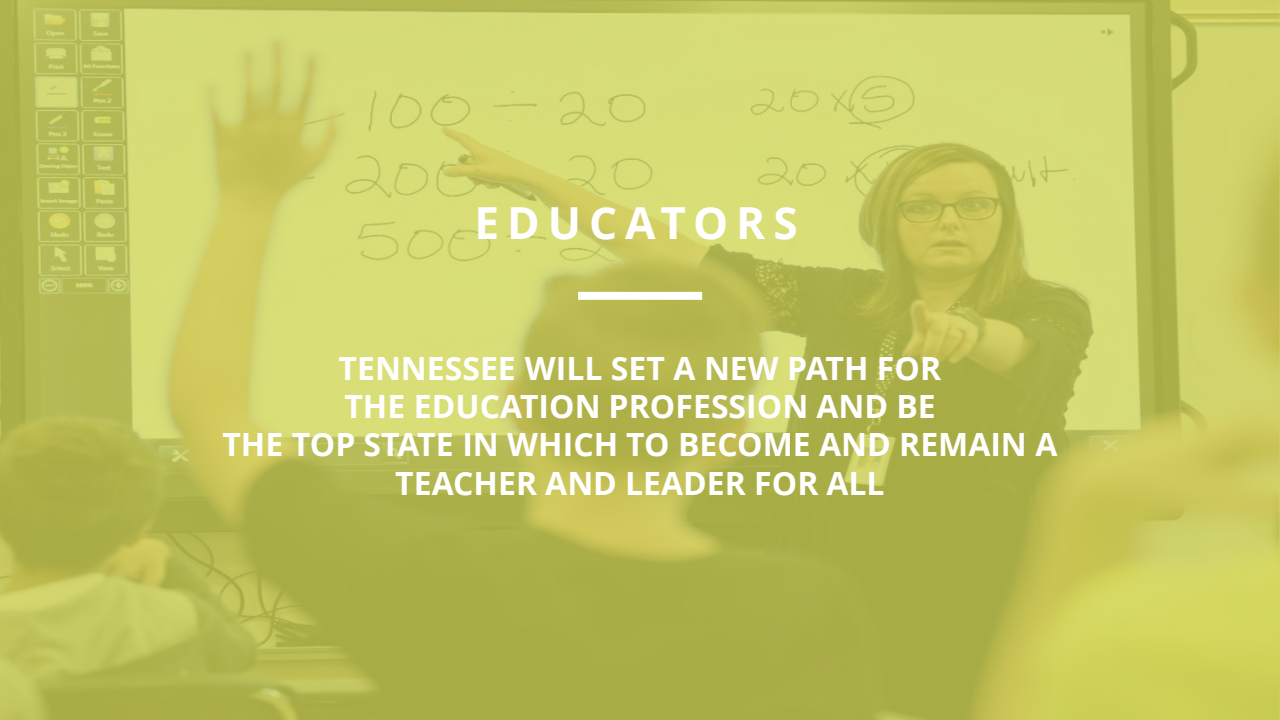
STUDENT READINESS

TENNESSEE PUBLIC SCHOOLS WILL BE EQUIPPED TO SERVE THE ACADEMIC AND NON-ACADEMIC NEEDS OF ALL STUDENTS IN THEIR CAREER PATHWAYS



EDUCATORS

TENNESSEE WILL SET A NEW PATH FOR THE EDUCATION PROFESSION AND BE THE TOP STATE IN WHICH TO BECOME AND REMAIN A TEACHER AND LEADER FOR ALL





Agenda

- Requirements of Section 504.
- Differences with IDEA.
- Responsibilities of public schools in educating students with disabilities.
- Additional considerations.
- You be the judge!
- Q & A.

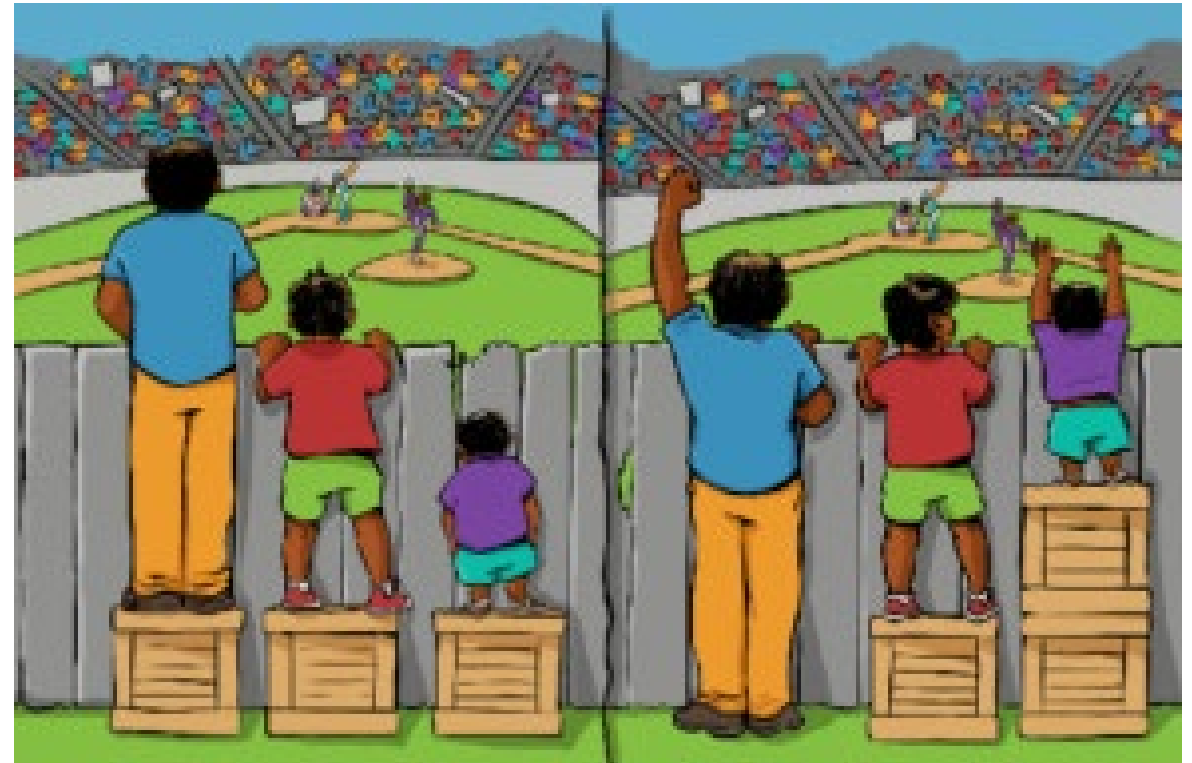


Section 504 Overview



What is Section 504?

- Part of the **Rehabilitation Act of 1973** that prohibits discrimination based upon disability.
- Not the same as IDEA.
- IDEA provides special education to students with disabilities and **Section 504 prohibits discrimination and “levels the playing field” for students.**
- Remember that the civil rights protections of Section 504 also apply to students with IEPs.



Who must comply with Section 504?

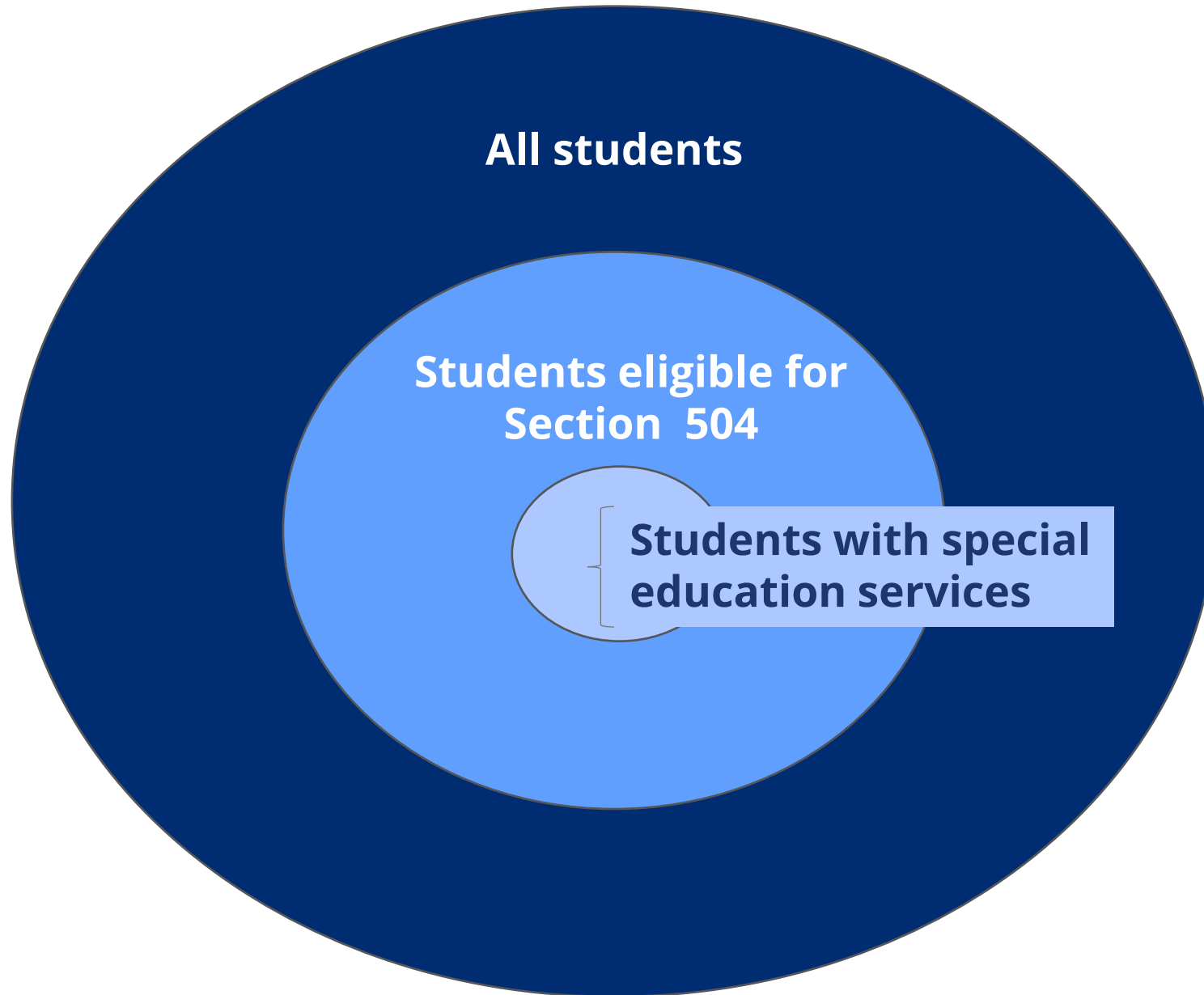
- Section 504 prohibits discrimination on the basis of disability by schools that receive federal financial assistance.
- All public schools and the state department of education must comply with Section 504.



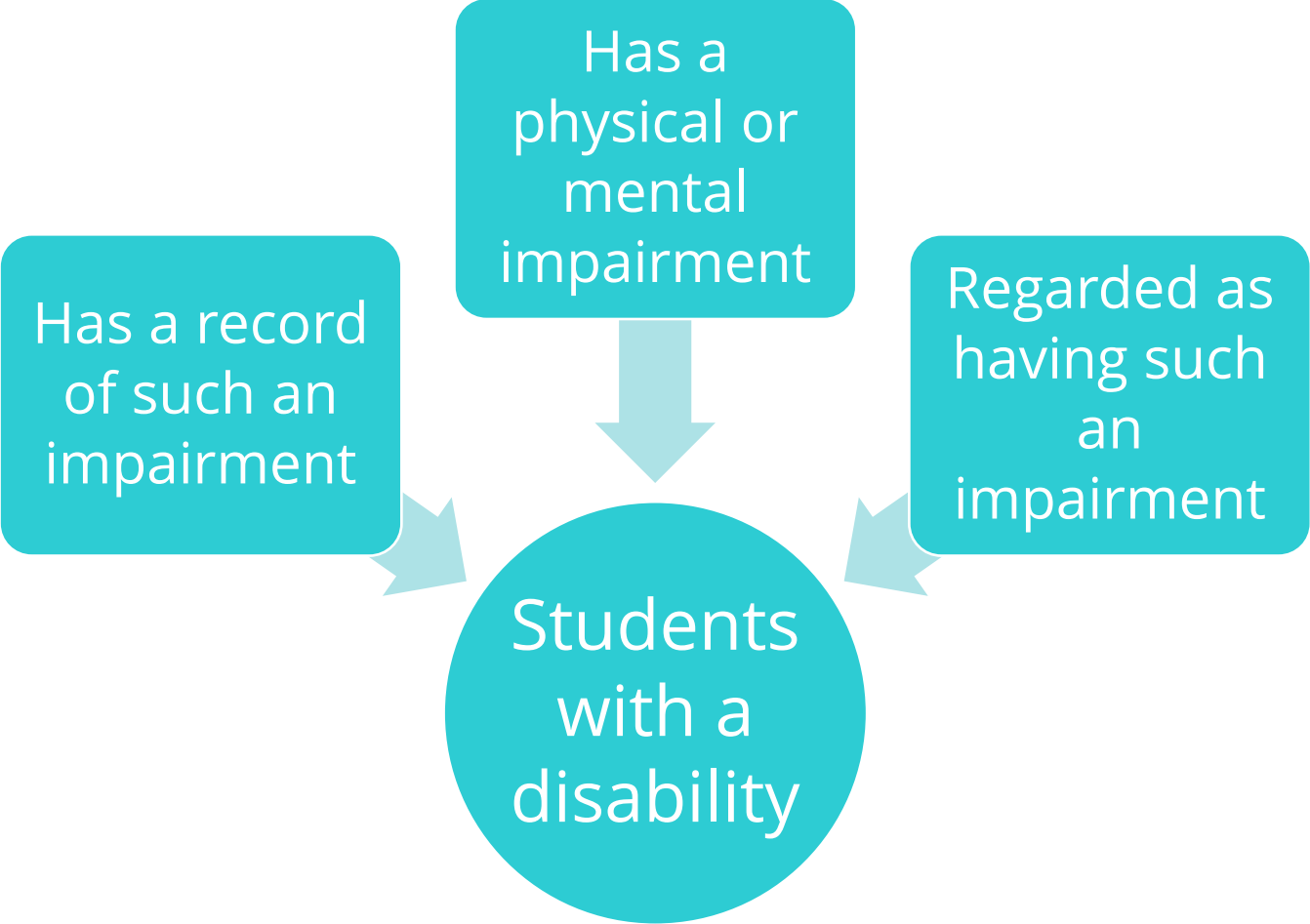
Individuals with Disabilities Education Act (IDEA) vs. Section 504

- IDEA **requires** a student to have a qualifying disability listed in IDEA and thereby need special education and related services. IDEA is an entitlement law designed to serve a specific population.
- Section 504 protects a qualified student with a disability **regardless** of whether the student needs special education. Section 504 is a civil rights law that prohibits discrimination based on disability.





Who is covered by Section 504?



What is a 504 plan?

A written document developed by a review committee that states the nature of the concern, the specific accommodations, and the related support services to be provided to an eligible student.



Who gets a 504 plan?

- A student with a physical or mental **impairment** that **substantially limits** one or more major life activity.
- Determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on a **case-by-case basis**.
- Remember, most (if not all) students with IEPs will meet this criteria and are therefore protected by Section 504.



Student Profiles

Student #1

- May say things indicating they are struggling
- May struggle to focus on assignments
- May not take part in class activities

Student #2

- May struggle to sit still in class
- May trouble executing multistep tasks
- May suffer from decision paralysis where they seem “stuck” on something

Student #3

- May be absent frequently
- May request frequent bathroom breaks or take longer than normal in the restroom
- May frequently leave school early



What can go into a 504 plan?

- Accommodations
- Modifications
- Related services
 - ✓ Counseling
 - ✓ OT
 - ✓ PT
 - ✓ Speech
 - ✓ Transportation
 - ✓ Assistant/aide
 - ✓ And more



Equal Access

LEAs **must** provide equal opportunities of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services.



Bullying and Harassment

- Section 504 prohibits disability-based harassment (bullying a student ***because*** of their disability)
 - Abusive jokes, crude name-calling, threats, physical assault, etc.
- Applies to visible and non-visible disabilities
- When a child who receives special education or related services is harassed *on any basis* (e.g., weight, appearance, socio-economic status, etc.), a school's failure to remedy may constitute a denial of free and appropriate education (FAPE)



District Obligations

- Find and notify (child find)
- Refer and evaluate
- Provide FAPE
- Least Restrictive Environment (LRE)
- Implement 504 policy
- Procedural safeguards
- Provide grievance process
- Accessibility



Filing a Complaint with OCR

- Complaints of disability discrimination may also be filed with the U.S. Department of Education Office for Civil Rights (OCR).
- OCR examines a range of cases involving procedures by which LEAs identify and evaluate students with disabilities, the procedural safeguards provided to these students, and incidents in which students with disabilities are allegedly subjected to treatment which is different from the treatment of similarly situated students without disabilities.



Differences with IDEA



Why would a student need a 504 plan rather than an IEP?

- A student needs an IEP if they require special education, defined as “specially designed instruction.”
 - Specially designed instruction is defined by IDEA as “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology or delivery of instruction (i) to address the unique needs of the child that result from the child’s disability; and (ii) ensure access of the child to the general curriculum...”
- A student needs a 504 plan if they do **not** require specially designed instruction, but instead need some supports, services, or accommodations in order to access general education.



Compare with IDEA

Section 504

IDEA

General purpose

A broad civil rights law which protects the rights of individuals with disabilities in programs and activities which receive federal financial assistance from the U.S. Department of Education.

A federally funded statute which provides financial aid to states in their efforts to ensure adequate and appropriate services for students with disabilities.

Qualifying disabilities

A physical or mental impairment that substantially limits one or more major life activities.

Fourteen disabilities under federal law and two disabilities under state law.

Compare with IDEA



Section 504

IDEA

Free Appropriate Public Education (FAPE)

“Appropriate” means an education comparable to the education provided to nondisabled students.

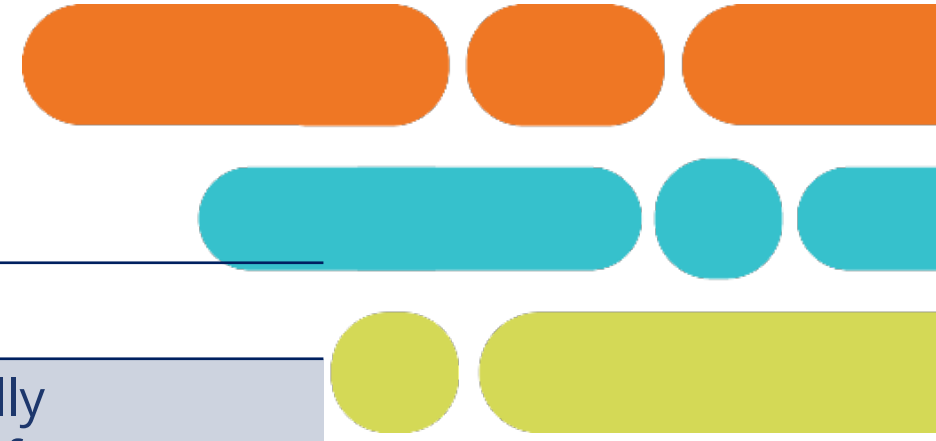
“Appropriate” means a program designed to provide an educational benefit.

Eligibility for services

A student is eligible if s/he has or has had a physical or mental impairment, which substantially limits a major life activity or is regarded as disabled by others. The student is not required to need special education.

A student is only eligible to receive IDEA services if the IEP team determines that the child has a disability (as defined by 34 CFR 300.08(c)) and needs special education and related services.

Compare with IDEA



Section 504

IDEA

Accessibility

There are detailed regulations regarding building and program accessibility and comparable facilities. This includes academic settings.

They are not specifically mentioned, although if modifications must be made to provide FAPE, IDEA requires it.

Evaluations and Reevaluations

Periodic re-evaluations are required. Re-evaluation is required before a significant change in placement.

Re-evaluations must be conducted at least every three years and are not required before a change in placement.

Compare with IDEA



	Section 504	IDEA
Transition services	Not required.	Required.
Independent educational evaluation	Not required.	Required.
Parental involvement in decision-making	Encouraged member of 504 team.	Required member of IEP team.

LEA Obligations



Section 504: Free and Appropriate

Free and Appropriate Education:

Must be provided to each qualified student with a disability in the district's jurisdiction regardless of the nature or severity of the disability.

This includes:

- not charging for costs related to the disability, but a district may charge usual fees paid by all students; and
- providing appropriate regular or special education and related aids and services designed to meet a student's individual needs **as adequately as the needs of non-disabled students are met.**



Section 504: Find and Notify

- **Every** year, each district **must**:
 - find students with disabilities in the district; and,
 - notify parents/guardians of students with disabilities of the district's duties under Section 504.



Identify and Evaluate

Districts **must** individually **evaluate** any student who, because of a disability, needs or is believed to need special education or related services.



When must the evaluation occur?

An initial evaluation must be completed when a team suspects a student has a disability and has reason to believe the student may need additional supports.

Must occur prior to determining the student's eligibility and initial placement of a student with a disability.



Section 504: Purpose of the Evaluation

Purpose of Evaluation: To help determine whether a child is a qualified student with a disability under Section 504

Section 504 requires the use of evaluation procedures that ensure that children are not:

- misclassified,
- unnecessarily labeled as having a disability, **or**
- incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.



Evaluation Team

- Determines eligibility and appropriate modifications, related aids, or services
- Composed of:
 - Section 504 Coordinator,
 - Principal or LEA, and
 - Professionals knowledgeable about the student, as needed
- Other persons may be invited to attend the committee meeting
 - Highly encouraged to include parents*

*The review committee meeting may proceed when the parents are not present, but every effort should be made and documented by the coordinator to have parents attend the meeting, such as calling them or rescheduling the meeting



Evaluations

The evaluation is intended to answer the following questions:

- 1) Does the student have a disability under Section 504?
- 2) What are the student's individual educational needs?
- 3) Does the disability substantially limit a major life activity?



Evaluations

- Assessments (determined as needed by the team) **must**:
 - include a variety of sources of information;
 - be tailored to evaluate the specific areas of educational need; and
 - be validated for the specific purpose for which they are used and appropriately administered by trained personnel.
- Results/information obtained must be documented.
- All significant factors related to the student's learning process must be considered.
- Team members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability.



Evaluations

- Districts **must** individually **evaluate** any student who, because of a disability, needs or is believed to need special education or related services.
- Must have parental consent to conduct the evaluation and prior to initial provision of services



You be the judge

- Mr. Williams is very concerned. In September, two weeks after the new school year began, his 16-year-old son told him that he was having a hard time hearing his teacher and, as a result, he is unable to take detailed notes during class lectures.
- The school promised to evaluate the student, and Mr. Williams consented to the evaluation before the end of September.
- However, it is now December, and, to date, the evaluation has not started, never mind finished.
- Should the school have completed the evaluation before December?



You be the judge

- A. No. Section 504 does not have a specific timeline for the completion of evaluations, so LEAs may take as long want to complete evaluations.
- B. No, Section 504 does not have a child find requirement.
- C. Most likely yes.
- D. Yes. Section 504 evaluations must be completed within 45 calendar days.



You be the judge

C. Most likely yes.

- Section 504 does not provide a specific amount of time for school districts to complete an evaluation.
- However, under the IDEA (another Federal law that protects students with disabilities and of which schools should be aware), an initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation or if the State has established a different timeframe for conducting the evaluation, within that timeframe.
- OCR generally looks to the IDEA timeline, or if applicable, to State requirements or local district policy to assess the reasonableness of the time it takes the school to evaluate the student once parental consent has been obtained.

Question 1: Does the student have a disability under Section 504?

The team must determine if the student has a physical or mental **impairment** which **substantially limits** one or more **major life activities**.



What is an impairment?

Any physiological condition that affects a bodily system, or any mental or psychological disorder.¹

¹34 C.F.R. 104.3(j)(2)(i)



Physical Impairment

34 C.F.R. 104.3(j)(2)(i):

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 - neurological
 - musculoskeletal
 - special sense organs
 - respiratory, including speech organs
 - cardiovascular
 - reproductive
 - digestive
 - genito-urinary
 - hemic and lymphatic skin
 - endocrine



Mental Impairment

- According to 34 C.F.R. 104.3(j)(2)(i):
- Any mental or psychological disorder, such as:
 - intellectual disability,
 - organic brain syndrome,
 - emotional or mental illness, and
 - specific learning disabilities.
- The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.



Major Life Activities

- caring for oneself
- performing manual tasks
- walking
- seeing
- hearing
- speaking
- breathing
- learning
- working
- eating
- sleeping
- standing
- lifting
- bending
- reading
- concentrating
- thinking
- communicating



Major Life Activities

Major life activities also include operation of “major bodily functions” such as:

- immune system functions
- normal cell growth
- digestive
- bowel functions
- bladder
- brain
- circulatory
- endocrine
- reproductive
- neurological
- respiratory



Medical Diagnosis

- If a parent submits a medical diagnosis for a student, does that alone qualify the student for services under Section 504?
- A medical diagnosis does not automatically qualify a student for services. It should be considered along with other sources when evaluating. However, a medical diagnosis may trigger an evaluation as it may give the district a reason to suspect the student has a disability.
- Is documentation of a medical diagnosis required?



Substantial Limitations

- Determined on a case-by-case basis by information obtained from a variety of sources within the evaluation.
- Does not mean severe restriction or inability to perform major life activity.
- Important life activities are restricted as to the condition, manner, duration under which they can be performed in comparison to most people.



You be the judge

- Shannon's seventh grade teachers report that she often falls asleep, without warning, during class and misses instruction.
- Her parents insist that she gets a good night sleep but note that their pediatrician told them Shannon might have narcolepsy, a chronic brain disorder that involves poor control of sleep and wake patterns.
- What should the teachers do?



You be the judge



- A. Staff should seek an evaluation to determine whether Shannon has a physical or mental impairment that is interfering with her ability to stay awake.
- B. Teachers should talk with Shannon and her parents, individually and separately, to determine if Shannon really gets a good night sleep. Determine if she has a television in her room and/or internet access after her parents go to bed. If onset of sleep is questionable, her teachers should help the parents investigate options to automatically turn off Wi-Fi and TV access to cable or satellite service after a specific time at night or remove the television and computer from her room.
- C. School staff cannot rely on a pediatrician's opinion that Shannon "might have narcolepsy." To address the behavioral issue of falling asleep in class, the staff should initiate a "Positive Behavioral Intervention" (PBI) and create a "Behavioral Intervention Plan" (BIP).
- D. The LEA should give her a 504 plan because her narcolepsy causes her to fall asleep in class.

You be the judge

- A. Staff should seek an evaluation to determine whether Shannon has a physical or mental impairment that is interfering with her ability to stay awake.
 - If the evaluation, which must be conducted at no cost to the parents or student, shows that the student has a disability, then the Section 504 Team must determine related aids and services the student needs under Section 504.
 - Why is answer D incorrect?
 - A. Districts must never “give out” a 504 plan without first conducting an evaluation to determine eligibility!
 - B. A medical diagnosis and/or doctor’s letter does NOT automatically entitle a student to a 504 plan. Rather, the team must *consider* the diagnosis and/or doctor’s note.



Question 2: What are the student's individual educational needs?

- Needs are identified by looking at a variety of evaluation sources, including:
 - aptitude and achievement tests;
 - teacher recommendations;
 - physical condition;
 - social or cultural background;
 - adaptive behavior; and
 - medical diagnoses/information.



Mitigating Measures

As of Jan. 1, 2009:

School districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must **not** consider the ameliorating effects of any mitigating measures that student is using.



Mitigating Measures

- Mitigating measures include*:
 - medication;
 - medical supplies,
 - equipment or appliances;
 - low-vision devices (**which do not include ordinary eyeglasses or contact lenses**);
 - prosthetics (including limbs and devices);
 - hearing aids and cochlear implants or other implantable hearing devices;
 - mobility devices;
 - oxygen therapy equipment and supplies;
 - use of assistive technology;
 - reasonable accommodations or auxiliary aids or services; and
 - learned behavioral or adaptive neurological modifications.



*not an exhaustive list

<https://www2.ed.gov/about/offices/list/ocr/504faq.html>

Transitory Impairment

- An individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.
- It is resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.



Who decides eligibility?

The multi-disciplinary team is a group that includes persons knowledgeable about the:

- student,
- meaning of the evaluation data, and
- placement options.



Placement

Educational services are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.



Placement Procedures

The team carefully considers:

- evaluation information from a variety of sources; and,
- all significant factors affecting the student's ability to receive a FAPE.



Placement Procedures

The team should:

- document all the information considered;
and
- not rely on assumptions regarding persons with disabilities or classes of such persons.



Types of Academic Settings

- Regular classes
- Regular classes with supplementary services
- Special education and related services



Academic Settings

All students must:

- be educated with non-disabled students to the **maximum extent appropriate** to the needs of the student with a disability; and
- be in a regular classroom unless an appropriate education cannot be achieved satisfactorily with supplementary aids and services.



Re-evaluations

Re-evaluations **must** be conducted:

- Periodically
- Before a significant change in placement



Health-Related Services

Generally, Section 504 obligates districts to provide students with disabilities those health-related services that are required to be performed during the school day to allow school attendance.



Individual Health Plans

- Health plans should not serve as substitutes for Section 504 plans.
- Services provided in health plans are usually mitigating measures and cannot be considered in determining eligibility.
- Districts/schools with a practice of placing students on health plans absent evaluations for Section 504 eligibility should re-visit their practice.



Special Diets

- If food is provided to all students, it must be provided to students with disabilities who have special dietary needs on the same basis that food is provided to non-disabled students.
- Districts must allow snacks for students with diabetes, but districts are not required to provide the snacks, unless snacks are provided to all students.



Accessibility & Comparable Facilities

- LEAs are **required** to ensure that students and others with disabilities, including parents, are not denied access to programs or activities because of inaccessible facilities.
 - This includes academic buildings, walkways, restrooms, athletic facilities, and parking spaces.
- Requirements to ensure accessibility depend on the date a building was initially built or altered.
- Any district facility for persons with disabilities must be comparable to the other facilities, services, and activities of the district.



Extracurricular and Other Non-Academics

- Students with disabilities **must** be provided an equal opportunity to participate in transportation, lunch, recess, physical education, clubs, athletics, etc.
- Such activities **may** be part of the 504 Plan.



Procedural Safeguards

School districts must provide a system of procedural safeguards regarding identification, evaluation, and educational placement.



Procedural Safeguards

Procedural safeguards **must** include:

- notice;
- records review by parent or guardian;
and
- impartial due process hearing with participation by parent and counsel
- A review procedure



Grievance Process

- LEAs are **required** to establish grievance procedures for resolving complaints under Section 504
- Grievance procedure should include reasonable time frames, an opportunity to present evidence, notification of findings and an appeals process
- Grievance procedures **must** ensure that complaints are resolved in a prompt and equitable manner



Due Process Procedures

LEAs **must** establish due process procedures that allow parents to challenge any decisions regarding the identification, evaluation, or educational placement of his or her child.



Additional considerations



COVID-19



Nothing in Section 504 was waived due to the pandemic.

- LEAs must continue to ...
 - Implement students' Section 504 plans
 - Conduct Section 504 evaluations
 - Investigate bullying and harassment of students with disabilities and take corrective action
 - Provide students with disabilities equal access to all opportunities/activities that are provided to students without disabilities
 - Provide comp ed when needed

Attendance

- Students receiving special education services or provided protection under Section 504 may need modified schedules.
 - These students may attend part-time days, alternating days, or for a specific amount of time as indicated in their IEP or 504 plan.
- Shortening a student's day may only be done if the student continues to receive a free and appropriate public education (FAPE), and the student needs a shortened day to meet his or her individual need for an appropriate education.



Homebound

May be needed for two reasons:

1. Medical homebound:

- Instruction provided at home or at a hospital or at other related locations to children who are unable to attend school due to a medical condition.
- Ex: Student has COVID.

2. Educational homebound:

- IEP/504 team determines that instruction in the home, hospital, or related setting is the student's LRE.
- Ex: Student's behavioral needs require instruction in the home.



Discipline

Manifestation Determination:

- **Must** be conducted when a student with a disability commits a disciplinary infraction that may result in expulsion or suspension for more than 10 consecutive school days or when a series of suspensions create a pattern of exclusions that constitute a significant change of placement
- **Must** determine if the misconduct is caused by the disability
 - If no, the student may be disciplined in the same manner as a non-disabled student
 - If yes, the student's review team must meet to determine if the student's current plan needs adjustment and whether the student's educational placement is appropriate.

Section 504 and Manifestation Determinations



Manifestation Determinations

Districts **must** "conduct an evaluation . . . of any person who . . . needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person . . . and any subsequent significant change in placement."

34 CFR 104.35 (a)



Who serves on 504 MDR team?

The MDR team **must** include:

- (1) people knowledgeable about the student,
- (2) the meaning of the evaluation data, and
- (3) the placement options.

This may be the same group that makes placement decisions.

OCR Staff Memorandum, 16 IDELR 491 (OCR 1989). See 34 CFR 104.35 (c).



MDR Purpose

MDRs are conducted to determine whether the student's misconduct was caused by or related to his physical or mental impairment.

Dunkin (MO) R-V Sch. Dist., 52 IDELR 138 (OCR 2009).



You be the judge!



You be the judge!

Keaton is a fifth grader. He has a disability and a Section 504 Plan. During the semester, Keaton received two 5-day suspensions for fighting at school. Keaton's behavior improved during the second nine weeks. He has been doing very well until an incident occurs and he gets suspended for 12 school days.

What are the schools' responsibilities regarding Keaton and his 504 plan?



What would you do?

- A. The school should reevaluate Keaton and his 504 plan because a 12-day suspension is considered a significant change in placement. Therefore, they must conduct a manifestation determination to determine if his disability is the reason for his misbehavior.
- B. The LEA is not required to do anything because Keaton misbehaved causing his suspension.
- C. The school should reevaluate Keaton and his 504 plan once he returns to school after his suspension.
- D. The school should have assumed that his disability caused his misbehavior and not suspended him.



Answer

A. The school should reevaluate Keaton and his 504 plan because a 12-day suspension is considered a significant change in placement. Therefore, they must conduct a manifestation determination to determine if his disability is the reason for his misbehavior

Any form of exclusionary discipline that exceeds ten days constitutes a significant change in placement which requires a manifestation determination. The school must conduct this review prior to imposing the significant change in placement.



You be the judge

- Maya has a 504 plan due to her inability to concentrate as a result of her ADHD.
- She has a 504 plan that provides extra time and a classroom aide to keep her on task.
- Mid-way through the school year, Maya's dad begins to notice a drop in her reading grades and informs her 504 team. Maya is working hard to remain on-task during her reading class, but she is still struggling to complete assignments in the amount of time provided. Dad requests that she be evaluated for an IEP.
- How may the school respond?



You be the judge

- A. Tell dad that if he obtains a doctor's note explaining the situation, Maya can be evaluated for an IEP.
- B. Hold a 504 meeting to discuss dad's concerns.
- C. Hold a support team meeting to consider dad's request for a special education evaluation.
- D. Continue to implement Maya's current 504 plan through the end of the semester after the data team has had time to review the most recent data.
- E. B or C.



You be the judge

B. Hold a support team meeting to consider dad's request for a special education evaluation.

- The dad has specifically requested a special education evaluation. The team must meet to consider that request and either request consent for the evaluation or document on a prior written notice the justification for not completing an evaluation.



You be the judge

- A fifth-grade teacher brings you (the 504 coordinator) a note from a parent requesting a 504 evaluation.
- The teacher says she forgot about the note that the parent sent in 3 days ago.
- How do you handle this?



You be the judge

- A. Consider the day you received the note as the day received and schedule a meeting within 10 days.
- B. Consider the day the teacher received the note as the day received and schedule a meeting within 10 days.
- C. Nothing. Wait for the parent to contact you directly.



You be the judge

B. Consider the day the teacher received the note as the day received and schedule a meeting within 10 days.

Stress the importance to your staff of getting this type of paperwork to the correct person in a timely manner. Do your due diligence and meet the parent. Document the events of the meeting and follow-up as appropriate.



Questions?

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